

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 10TH JULY 2007 / 19TH ASHADHA 1929

OP.No. 5875 of 2000(Y)

PETITIONER:

**G.GEORGE, DRAFTSMAN GRADE I,
P.W.D. SPECIAL BUILDINGS SUB DIVISION,
AYURVEDA COLLEGE CAMPUS,
THIRUVANANTHAPURAM.**

**BY ADV. SRI.S.M.PREM
SMT.K.P.SANTHI**

RESPONDENTS:

- 1. STATE OF KERALA, REP.BY
CHIEF SECRETARY TO GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM**
- 2. THE CHIEF ENGINEER (ADMINISTRATION),
PUBLIC WORKS DEPARTMENT,
THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SMT.T.B.RAMANI

**THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 10/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ORDER ON CMP. NO.9875/2000 IN OP. NO.5875/2000

DISMISSED

10.07.2007

SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PROCEEDINGS DT. 31.10.91 ISSUED BY THE EXECUTIVE ENGINEER.

EXT.P2:- COPY OF THE PROCEEDINGS DT. 16.10.96 ISSUED BY THE ASSISTANT EXECUTIVE ENGINEER.

EXT.P3:- COPY OF THE AUDIT OBJECTION RAISED IN AUDIT ENQUIRY NO.31 OF THE AUDIT PARTY , TRICHUR BRANCH OF THE ACCOUNTANT GENERAL, KERALA.

EXT.P4:- COPY OF THE PETITIONER'S REPRESENTATION SUBMITTED TO THE ACCOUNTANT GENERAL IN JANUARY , 1999 BY THE PETITIONER.

EXT.P5:- COPY OF THE GOVERNMENT'S ORDER DT. 5.2.2000.

EXT.P6:- COPY OF THE LETTER DT. 10.2.03 OF THE 1ST RESPONDENT.

/TRUE COPY/

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.5875 of 2000-Y

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Dated this the 10th day of July, 2007.

JUDGMENT

The petitioner entered service in the Survey Department. Thereafter, on a fresh recruitment, he joined the Public Works Department, that too, in a higher time scale of pay. Under such circumstances, the impugned decision, whereby the illegal grant of a higher grade has been recalled by the Government, cannot be found fault with, in the light of the decision of the Division Bench of this Court in **George Varghese v. State of Kerala** [2006 (3) KLT 852].

2. Applying the ratio of the decision of the Division Bench of this Court in **Santhakumari v. State of Kerala**

[2005 (4) KLT 649], the amounts paid in excess of the due salary can be recovered by the Government even in cases where such payments have been made without any request by the employee. However, on the facts and peculiar circumstances of this case, it is the specific pleading that the petitioner's daughters were undergoing education even while this writ petition was filed immediately after retirement. Such facts are stated in the affidavit filed in support of I.A.3456/2003 on which an interlocutory order was passed on 12-6-2003 to release the amounts due to the petitioner after effecting deduction.

Having heard the learned counsel for the petitioner and the learned Government Pleader on the grounds for relief against recovery, it is ordered that ends of justice would be satisfied, if one half of the over-drawals is recovered. Hence, it is directed that the deduction will be confined to one half of the over-drawals, on the very peculiar facts and circumstances of this case. The

OP5875/2000

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Department however, will not treat this as a precedent to be applied in other cases.

**THOTTATHIL B. RADHAKRISHNAN,
JUDGE.**

Sha/-

OP5875/2000

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.5875 of 2000-Y

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JUDGMENT

Dated: 10th July, 2007.